Chapter 6
CONFIDENTIALITY

Two fundamental principles of practice of battered women's programs are confidentiality and safety. Without a guarantee of confidentiality, battered women are less like to turn to programs for assistance. Services offered without confidentiality would be compromised. Furthermore, the safety of domestic violence programs would be jeopardized and staff would be subject to intimidation and retaliation.

We know that battered women are at serious risk from their abusers and that their abusers spend much of their time monitoring and harassing them. Battered women must be given real protection that will keep them safe from intrusion, harassment, and stalking and further abuse.

WHAT IS CONFIDENTIALITY?

Most often when domestic violence programs talk about confidentiality, they are referring to the information shared between a battered woman and a staff member or volunteer.

However, many other areas of information and disclosure are problematic and dangerous for battered women who need to keep their location confidential. These include postal records, medical records, and school records, Bureau of Motor
Vehicles records, voter registration, name change records, social security records, child support enforcement programs, welfare paternity requires and telephone technology such as Call Return and Caller ID. Internet technology and locater services are the newest and most advanced ways for batterers to find their victim.

All of these areas represent serious privacy issues for battered women and children. Some of these issues, like the postal records and Bureau of Motor Vehicles have been addressed in federal legislation. However, even when there are statues, policies or programs in place, the risks are still present and monitoring and evaluation is required. This is an area of rapid change**.** Staff and volunteers must pay close attention to privacy and confidentiality concerns.

WHY IS CONFIDENTIALITY SO IMPORTANT?

Most victims have been threatened with further assault or even death if they reveal what their abusers have done to them. Most battered women are terrified of

these threats. Many battered women are embarrassed about the abuse that they have undergone and are sometimes embarrassed and/or ashamed about their inability to control the violence.

Often, battered women are not able to get help from or be believed by those Professionals in the community who are able to hold privileged conversation. Those professional groups include counselors/psychotherapist**,** clergy, and attorneys. Without the availability of confidential communication, a battered woman may be reluctant to contact a domestic violence program or share information with the advocates because she fears her batter may find out she disclosed her abuse.

WHY WE MUST MAINTAIN CONFIDENTIAL COMMUNICATIONS?

We must maintain confidential communications because it is the ethical and legal practice required of our work. Battered women expect confidentiality in their dealings with domestic violence programs, hotlines and shelters. Ethics dictate that domestic violence programs maintain confidentiality of all records and communications regarding all battered women who receive their services. Domestic violence programs are required by federal law to have confidentiality provisions, including that the Shelter address will not be made public, if the program is receiving money from the Family Violence Prevention and Services Act (NPSA) or VOCA (Victims of Crime Assistance Act).

Beyond the general ethical and federal guidelines**,** advocates in Pennsylvania have worked hard to establish and maintain a legal statute guarding privileged communications.

THE PENNSYLVANIA CONFIDENTIALITY STATUTE

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As of 1988, the Protection from Abuse Act provides for confidential communication between battered women and domestic violence programs. The statute embodies an absolute privilege with an exception for child abuse reporting. The confidentiality privilege is found in the Protection from Abuse Statute, 23 Pa.C.S. §6116. It reads:

> "Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate or a co-participant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim.

> Neither the domestic violence counselor nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under Chapter 63 (relating to child protection services), a Federal or State mandatory reporting statute or a local mandatory reporting ordinance."

Confidential Communications are defined in 96103 (a) of the Protection from Abuse Act:

'All information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship. The term includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports, statistical data, memoranda or working papers, records or the like, given or made in the course of the relationship."

Given these definitions, we must then learn to apply them to the situations we will encounter in our work. There are several practice issues that require our attention:

Record- Keeping

Careful record-keeping methods are essential to support the privilege and avoid subpoena problems. Record keeping should be limited to essential information:

1. Information entailed in a service plan and documentation of services rendered, and
2. Other information needed to protect the program and its workers from liability.

You must remember that whatever is included in records can be potentially damaging to battered women and whatever is not in the records can usually be reconstructed by advocates and administrators or by interviewing former employees/volunteers if there is a critical need. When the legal community learns that records contain no verbatim statements of victims, no opinions of advocates, and only ***cursory*** information abut service delivery, it will be less likely that subpoenas will be issued since witnesses without records to refresh their recollections are not likely to be able to provide the court with meaningful information.

Informed Consent

Advocates are required to obtain consent before obtaining a release of information or acting on a battered woman's behalf. Informed consent means that the battered woman gave specific permission after:

- ✓ The situation was explained fully and carefully.
- ✓ The information was conveyed in a language and style that she understood.
- ✓ Any and all of her questions were elicited and answered.
- ✓ She had full opportunity to say no or to change her mind.

Release of Confidentiality

A release of confidentiality can occur through a release of information and/or release of records. Each is distinct and different.

A release of information may simply ***be*** confirmation that the battered woman is a participant or in residence at the domestic violence program. It could also be information about her future plans, the circumstances of the violence in her life, or her new place of employment. The police, a social worker, the elementary school or others may make this kind of request to the communities who are helping the battered woman. The information **may**be requested for a number of reasons. Some examples include:

- To verify her residence in order to enroll her children in school or to expedite a housing application.
- To meet probation requirements.
- To arrange an alternative work schedule with an employer.
- To follow up on criminal charges.

The battered woman must authorize a release of information unless there is a valid need to share the information that **meets** one of the four conditions to break confidentiality. This condition applies to questions ranging from requests from her mother to those from the police.

Any release should be:

- Put in writing in advance of the information released.
- Specific as to the request and purpose of the request.
- Time limited.
- Signed by both the battered woman and the advocate releasing the information.

Reasons to Break Confidentiality

There are four instances where information may be shared without the consent of the battered woman. Rarely are advocates mandated to share information outside of subpoenas. Even in those circumstances where the information must be shared or a report made, it is often possible to assist the battered women in sharing the information herself. The advocate's responsibility may only be to ensure that the information is reported in some way.

Confidentiality may be breached only in one of the following four circumstances:

1. When a child is being abused and the program has a duty to report abuse (The Women's Center is a mandated reporter - approval to make the report shall go through the Counseling Director and/or Executive Director).
2. When the program believes that the participant is about to commit homicide.
3. When the program believes that the participant is about to commit suicide; or
4. When the participant has died.

Module 5 – Reading 2

Confidentiality Bowl

A. Statement of Confidentiality

Scenario #1

Joann has been attending support group on Wednesday night with other shelter residents. The evening shelter manager facilitates the group and the group members choose the topic areas. Often it is not a specific topic but rather conversations about their experiences and feelings and plans. On this particular night, one of the women in the group disclosed that her abuser had forced her to terminate a pregnancy. She said her abuser didn't want any little brats running around and told her she certainly would be a lousy mother. The woman was very upset as she told the group about this. Later that evening, Joann was using the pay phone on the second floor of the residence and Mary, one of the members of the support group, heard Joann say to whoever she was talking to: "One of the women in here had an abortion. Her abuser made her do it. But I don't think that it could have happened that way 'cause she'd have to sign to get it done. I can't believe she killed her baby!" Upon hearing this, Mary went to the shelter manager and told her.

When Joann and the other shelter residents came into shelter, the shelter rules were reviewed and signed by the victim and the counselor/advocate. One of the rules was that all shelter residents had to maintain confidentiality regarding the other victims and their children in shelter and the location of the shelter.

If a battered woman discloses information to a third party about another victim, is this a breach of confidentiality under the statute? Explain.

Should shelter services be terminated for such a disclosure? Why/Why not?

If Joann requested shelter at a later time, should shelter be denied because of this situation? Why/Why not?

Scenario # 2

You are a shelter advocate and Rose is a resident. One day she returns, visibly upset. She also has a red mark on her cheek. You ask her if she is okay and if she wants to talk. She declines.

The next day Rose leaves the shelter and you don't hear from her again. Two weeks later you receive a message from the local police asking if you've seen her. You decline to confirm. The police tell you they know she was there and they don't want to hear about the communications you had with her. They just want to know what she looked like and how she acted the last time you saw her.

Can you tell them?

B. Definitions

Scenario # 3

Jenny is a shelter resident. She does not have a job at this time because her abuser did not allow her to work. After speaking to Sandy, the welfare advocate at the shelter, she called the county assistance office and made an appointment. Jenny was very nervous about going to the welfare office and asked Sandy to accompany her. Sandy accompanied her and sat in on the interview. During the interview Jenny disclosed to her caseworker, the domestic violence, since she felt she needed to explain why she hadn't been employed. The caseworker explained the requirements including good cause for RESET and child support. The application was completed and Jenny chose to try the 8 - week job search.

Several days later the caseworker called Sandy. He simply wanted to confirm that Jenny was still in shelter.

Can Sandy confirm that Jenny is still in shelter since she was present during the interview at the welfare office? Why/Why not?

Scenario # 4

Sally received services at the center two years ago as a participant in support in group. You are walking down the street and you see another group member, Rita. She approaches you and she hugs you. You chat for a while and Rita asks you about Sally.

Can you tell Rita you haven't seen Sally in two years?

Can you tell her what was going on in Sally's life?

Can you tell Rita anything if it has been seven years since you spoke to Sally?

C. Access to Records

Scenario # 5

Stephanie, Esquire, is a board member for your program, and is in fact a member of the executive committee. Though it is not a requirement for board members, Stephanie chose to complete the 40-hour domestic violence training offered by the program for new staff and direct services volunteers as well as the 5-hour practicum. She has not served as a direct services volunteer.

Becky is a current shelter resident. In the past Stephanie represented Becky in filing a complaint because the abuser violated a PFA by stalking Becky. Becky later returned to the abuser, then left again and came to shelter.

Stephanie heard that Becky was in shelter, and asks the program director if she can see Becky's file. She reminds the director that she has completed the 45-hour training and has been Becky's attorney.

Do you let Stephanie see the file? Why/Why not?

Does it make a difference that there is a past consent to release information to Stephanie in the file? Explain

Would it make a difference if the reason Stephanie wants to see the file is because Becky called her and filed an internal complaint against her shelter counselor/advocate? Explain.

D. Content of Client Files

Scenario # 6

Latonya came to the shelter after talking to the hotline counselor. As part of the intake process, Latonya informed the intake counselor that she has been suffering from anxiety and depression and is currently taking Paxil. She indicated that she has been seeing a mental health counselor. She was prompted to call Crisis Intervention because she was beginning to wonder if the only way out of the abusive relationship was suicide.

Is it appropriate to write all of this in the client file? Why or why not?

Scenario # 7

Margaret is a 45-year-old battered woman. She has been coming to the Center for support and counseling for many years. You have an open and trusting relationship with her and you have helped her safety plan successfully many times. Her husband has been acting more violent lately. He has started to make threats in front of their adult children, he leaves the house for several days at a time and returns in the middle of the night. Margaret believes he is making plans to kill her. She wrote a letter describing her fears and his actions and she wants you to keep it in her file in case anything happens to her.

Should you accept it?

Does it make any difference if it's notarized?

Does the answer change if she sent it to you in the mail?

Does it make any difference if she is using the letter to draft a PFA Petition?

E. Release of Information

Scenario # 8

Latonya informed the shelter intake counselor that she was suffering from mild anxiety and depression, had albeit briefly considered suicide as a way to escape her abuser, is taking Paxil, and has been seeing a mental health counselor on a weekly basis for the last three months.

Do you ask Latonya to sign a waiver to talk to the mental health counselor for the purpose of case management? Why or why not?

Do you ask her to sign a waiver to speak to the physician who is prescribing the Paxil? Why or why not?

If Latonya tells the counselor that she signed a waiver with the mental health counselor to talk to the domestic violence program about her treatment, her suicidal ideation and her progress, does the program need her to sign a consent to release information?

Scenario # 9

Marilyn is a single mother of three children, ages 7, 4, and 4 months. She left her batterer after the most recent incident involving the police. She is now in shelter and her biggest concern is that her batterer is going to try to take custody of her 4-month-old. Her two older children were fathered by another man, who also abused Marilyn. The practice in your county is that police inform Children & Youth services when children are present at an altercation. In Marilyn's situation, the two older children were upstairs, presumably sleeping and the baby was in Marilyn's arms. You hear about this from Marilyn

and are expecting CYS to call. You explain this to Marilyn and she becomes very upset because she had had problems with CYS in the past 60 days.

Should you tell her to sign a release so you can talk to CYS and keep them off her back?

Should you explain how a waiver works and give her the choice and safety plan about it?

What's your responsibility, if any, to mandated reporting?

F. Program Initiated Disclosure

Scenario # 10

Samantha is a 24-year-old woman who has been in recovery for the last five years after a decade of injection drug use. During the intake procedures, Samantha told the shelter counselor that she is a person living with AIDS.

Samantha told the legal advocate during the completion of the application for a PFA that she had been living with the abuser for a little over two years. The legal advocate knew about her AIDS diagnosis from the file. She asks Samantha if the abuser physically hurt her because of her AIDS diagnosis. Samantha replied that she had never told the abuser that she had AIDS. The legal advocate was a little upset about this and asked Samantha if they had practiced safe sex. Samantha replied "No, because the abuser did not like condoms." After several days in the shelter, Samantha left and returned to the abuser.

Does the program have a duty to warn Samantha's abuser about her AIDS status? Why/Why not?

While Samantha was in shelter, should the other residents have been warned? Why or why not?

Did all staff need to know of her AIDS diagnosis? Should it have been written in the file? Explain

Scenario # 11

Barbara is a battered woman's advocate and has worked in the center for five years. Yesterday, Barbara was at the supermarket and she saw a past client. The battered woman, Angela, was yelling at her school-age-child. The baby in the shopping cart started to cry and Angela yelled at him. Angela turned to the school-age-child and slapped him across the face. The older boy whimpered and reached for his mother. Barbara turned around and walked a different way in the store. She could still hear Angela yelling at her children and she thought she heard another slap.

Barbara wonders if she should make a report to Children and Youth?

Does your answer change if she saw the same interaction in a shelter?

Does it change if his nose was bleeding?

Does it change if the mother has on open CYS case?

CONSENT FOR RELEASE OF INFORMATION

I, _____ grant permission to the Women's Center to share information concerning the communications and consultations I have had with the Women's Center as a result of my having been victimized.

I understand that I have no obligation whatsoever to disclose any further information from my individual case record. I also understand that once released, this information may not be protected by confidentiality or non-disclosure laws. The information could potentially be used against me by the agency/person who it is released.

PERSON:_____
AGENCY NAME:_____
AGENCY ADDRESS:_____
SPECIFIC INFORMATION TO BE RELEASED:_____

PURPOSE:_____
EXPIRATION DATE: (Maximum 30 days):_____

I have read this form and fully understand its contents. I voluntarily, intelligently and knowingly waive that right and agree to the temporary and limited release of my records to the above named agency/person.

SIGNED:_____ DATE:_____
WITNESS:_____

The above consent shall only be effective for release of the information until the expiration date unless a written request to rescind said agreement is received prior to the expiration date.

Non-official Form

REJECTION OF RELEASE OF INFORMATION

I have read this form and fully understand its contents. I understand that the above named agency/person has requested information. However, I do not consent to the release of any information by The Women's Center at this time.

SIGNED:_____ DATE:_____
WITNESS_____

I have been offered a copy of this release and have accepted_____not accepted_____it.

CUSTODY

Child custody can be a very volatile area in the context of domestic violence. Custody litigation often becomes a tool for batterers to extend or maintain their control and authority over the battered women after separation. When trying to obtain custody of children, battered women face three choices:

1. Do nothing through the courts and may arrangements informally.
2. File a petition for a protection order and request temporary custody.
3. File a complaint for custody with the Court.

Each alternative may be appropriate in different situations and the most appropriate way to proceed depends upon the individual woman's circumstances. Practices and procedures vary across counties. In addition, each custody situation often have its own unique factors, which make it difficult to assure a uniformity of process or outcome among the counties.

What is absolutely clear and without dispute is that children are victimized by domestic violence. The custody process, both through the Protection from Abuse procedure and through the regular custody procedure, may be the most effective and expedient avenue to protect children from violent homes and environments.

Pennsylvania Child Custody Law

In Pennsylvania, custody of a child can be determined through a custody action filed under the custody law (23 Pa.C.S. Ch. 53*),* in a Protection From Abuse action or a child dependency proceeding pursuant to the child protection services law. The Court of Common Pleas has the jurisdiction to make the child custody determination under each of the three different laws.

In 1990, the Pennsylvania legislature amended the child custody law to require that the trial court "shall consider, when making an order of custody, partial custody or visitation, each parent and adult household member's present and past violent or abusive conduct that may include, but is not limited to, abusive conduct as defined by the Protection From Abuse Act." This custody law does not explain how the court should consider domestic violence, what weight to give it, or exactly how it *should* affect the final custody determinations. Each case must be individually evaluated, thereby making the presentation of evidence of domestic violence, its impact on the children involved, and on children in general, critical.

In 1996, the Pennsylvania legislature passed Jen and Dave's Law, which establishes a process for a parent who is in custody litigation, or who has been awarded a custody order, to obtain information about the arrest or charging of the other parent for a crime of violence. The laws also provide the opportunity for a parent to file in court for modification of the visitation or custody award. A judge will then decide if the change is warranted.

Columbia and Montour Counties

In Columbia and Montour Counties, the victim may not be granted temporary custody in the temporary Protection from Abuse Order unless there is alleged abuse to the minor children. However, this does vary on a case-by-case

basis and is based on the nature of the abuse to the victim. It is in the woman's best interest to always request custody as this may save her time and money in the long run.

At the time of the hearing for the one-year Protection from Abuse Order, if the parties are able to reach an agreement as to custody, the court will enter an order including custody based upon the agreement. Although the Protection from Abuse Order expires after one year, the custody petition continues until further modification by the Court.

If the parties are unable to reach an agreement and there has been no abuse to the child(ren), either party may then file a Pro Se Custody Action. Forms for this may obtained from the Court Administrator.

Once the custody complaint has been filed, the Plaintiff (person filing the action) is required to serve it on the Defendant {person against whom the action is filed). This is done by sending it certified mail, return receipt requested. When the receipt (green card) is received by the Plaintiff, she must file the receipt with the Court in the Prothonotary's office. Once the Prothonotary receives the complaint, it is referred to the Special Master for a conference. It may take up to three months to have a conference. At the time of the conference, the Special Master will attempt to facilitate an agreement between the parties. Should the parties reach an agreement, the Master would prepare the agreement for the court for preparation of a Final Order. If the parties are unable to agree, the Master will set forth the issues to be resolved by the Court, and will schedule the matter for a custody hearing. The Special Master may set up a temporary visitation schedule until the matter can be resolved.

What happens if there is no Court Order?

An agreement about custody and visitation is fine as long as both parents are willing to follow it. The advantage of turning a custody agreement into a Court Order is that then the Court can force the parties to follow it.

If there is no custody order, both parents have an equal right to custody and either can lawfully take physical possession of the child at any time. Taking a child away without the other parents consent can be held against a victim in Court, however, if that action was not reasonable. If the other parent takes the child and you cannot work out an agreement for the return of the child, you can file a custody complaint and ask the Judge to order the child returned.

Custody Definitions

- **Legal Custody**

  The legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious, and education decisions.

- **Partial Custody**

  The right to take possession of a child from the custodial parent for a certain period of time. Sometimes referred to as shared custody, this term applies exclusively to the physical nature of having custody of a child for a defined period of time.

- **Physical Custody**

  The actual physical possession and control of a child.

- **Visitation**

  The right to visit a child (supervised or unsupervised). The term does not include the right to remove a child from the custodial parents' control.

- **Shared Custody**

  An order awarding shared legal or shared physical custody, or both, of a child in such a way as to assure the child of frequent and continuing contact with and physical access to both parents. This term is also referred to as **Joint Custody.**

It is important to note that an order of shared (legal and/or physical) custody represents difficult issues when there is or has been a history of domestic violence between the parties. Successful shared custody requires contact, cooperation and participation by and between the parties. The imposition of shared custody can produce significant opportunities for danger to the abused parent and is not appropriate when there has been a history of

family violence.

UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA)

All custody orders, in order to be valid, must comply with the provisions and requirements of the UCCJA. Each state has adopted the UCCJA as part of its own state custody laws. The UCCJA sets rules for determining what state has jurisdiction in a custody complaint. Jurisdiction conflicts generally occur when the parents live in different states and can be problematic for victims who flee to escape the abuse.

According to the UCCJA, in order to issue a valid custody order, a court must have jurisdiction over the child. This jurisdiction is determined generally by the child's location for the last six months. The state where the child has resided for at least six months is called the "home state", and is thus said to have "home state jurisdiction" over the custody matter. As mentioned, however, this six-month requirement can be problematic for battered women. If a battered woman must flee the "home state" to protect herself and the children, she may file a custody petition in the new state. This new state, however, will only take jurisdiction of the matter if there is no outstanding order regarding custody from any other state of if it can assert emergency jurisdiction due to the threats of danger to the children's welfare. These jurisdiction issues and compliance with the UCCJA can become very complicated, and are best left to an attorney.

PARENTAL KIDNAPPING PREVENTION ACT (PKPA)

The PKPA is a federal law enacted in 1981. As a federal law, it takes precedence over all state laws, including a state's UCCJA provisions. Generally, the PKPA requires states to respect and enforce the custody orders in other states. Its purpose is to prevent a parent from snatching the children, going to a state with more favorable custody provisions, and filing for custody in that state. This is also referred to as "forum-shopping." Because of the possibility of federal kidnapping charges, it is vital that battered women be encouraged to seek the advice and assistance of an attorney before relocating with her children if a custody order of any kind already exists.

Additional Information to Keep in Mind when providing options to Victim

It may not always be in the best interest of the victim to file for custody. The

Court looks favorably on a parent who allows the other parent to see the child(ren). But if there is a risk of the parent fleeing with a child, the custodial parent doesn't have to allow them to see the child because he/she is a parent (unless there is a court order). If there is a court ordered custody arrangement, a victim may want to request that the following provisions be including:

A. No physical discipline of child(ren)
B. No drug or alcohol use prior to and during visit with child(ren)
C. Victim should be at her/his own home when transfer takes place because most people in a public setting won't come to her aid. It is best to use a curbside exchange of the child and have a third party witness the exchange. However, if the victim doesn't feel safe with curbside exchange, curbside exchange should not be used.

All provisions must be very specific. List the exact times and dates of pick-up and drop-off as well as exact location of exchange.

The victim should keep a complete and honest journal of everything that transpires concerning custody. Keep a log of all no shows, each time the child is returned late, in poor health, dirty, tired, etc.

If the child(ren) does not want to go to school because they are scared that the other parent will snatch them, explain that **to** the school and request that they allow the child to remain at home that day and provide homework. Don't keep the child out of school too long.

If supervised visit is approved by the Court, be sure the supervisor signs and Affidavit of Accountability and files it with the Court. This affidavit will spell out the supervisor's duties and may include:

a. Recognize that she is bound by Order.
b. That she is to assure that the child is safe
c. That if the parent attempts inappropriate behavior to the child, the supervisor must stop the visit immediately and notify the primary caregiver (parent/victim).

It is also important to remember that either party may request a modification of a custody order at any time. A Judge may change the Order if it appears that a change would be best for the children.

Custody should never be about two parents trying to win out over the other. Custody should always be about what is in the best interest of the child(ren).

A person who disobeys a custody order may be held in contempt of court or charged with a crime and may be fined and/or jailed. The judge may also take away custody or visitation rights from someone who has disobeyed the court order. In some cases, particularly in emergencies when the child's safety is in danger, the police may be able to help. However, local police do not like to get involved in custody situations unless so ordered by the Judge.

CHILD SUPPORT

Both parents have a financial responsibility to support their child(ren). Usually, the parent with whom the child(ren) lives receives support payments from the other parent.

The Court considers the income of both parents (or the amount each is capable of earning). Statewide support guidelines establish the standard amount of support owed. Copies of these statewide guidelines are available at the domestic relations office. State law also requires that the non-custodial parent provide medical insurance for the child if it is available through employment at a reasonable cost. If health insurance is not available through either parent's employment, both parents can be ordered to get insurance at a reasonable cost which covers the child. Reasonable costs involving childcare are split equally between the parents and added to the non-custodial parent's support obligation.

Once a child reaches the age of 18 or graduates from high school, the parents are usually no longer required to pay support.

A complaint for child support is filed in the domestic relations office. The office will give you a form to fill out. Then a conference will be scheduled. At the conference, both parents must tell a conference officer the amount of their income and expenses. The conference officer then uses the statewide guidelines to determine what amount of child support is to be paid. If parent is unhappy with the result, the parent can file an appeal and a hearing will be set at which time a Judge will decide on the amount of child support to be paid.

If a person denies he is the father of the child, the domestic relations office will schedule blood tests to be done in order to decide if the person is really the father of the child.

Either parent can ask for an increase or decrease in the amount of a child support if they can prove a substantial change in their lives has happened. Changes in earnings should be reported, but sometimes are not. When parents believe the earnings of the other have changed, they may ask for a hearing. In addition, under state law, the domestic relations office should review a support order every three years from the date it was entered.

In order to change a child support order, a parent must go to the domestic relations office and fill out the proper form. After the form is complete, a conference will be scheduled.

As part of the original support order, a wage attachment is automatically ordered. If, however, a parent is 30 days behind in paying support, the domestic

relations office is required to take enforcement action, which may include suspending a driver's license or a professional license, taking lottery winnings belonging to the parent who has not paid support, taking an IRS refund check, seizing the delinquent parent's personal property or banks accounts, or scheduling a contempt hearing where the delinquent parent is ordered to appear before a judge. The judge may enforce the order in a variety of ways, including send the person to prison.

Sample of a Support Calculation

*Gross income minus deductions = net income
*Deductions include taxes, medical coverage and union dues (only deductions that are required)
*Father's net income is $2,500.00 per month.
*Mother's net income is $1,500.00 per month.
*They have one child and according to the domestic relations guide, the proportionate expenditure for one child is 14%.

$2,500 + $1,500 = $4,000
14% x $4,000 = $560.00 (cost to properly care for child)
Father's net income expressed as percentage of combined income is ,625
Therefore, .625 x $560 = $350.
Mother's net income expressed as percentage of combined income is ,375
Therefore, **.375** x $560 = $210.
So in this situation, the father would pay $350.00 each month to the mother for child support.

DIVORCE

To begin a divorce in the Commonwealth of Pennsylvania, one or both of the spouses must have lived in Pennsylvania for at least the past 6 months. The person who is asking for the divorce (the Plaintiff) files a complaint that tells the Court why she should be divorced from her spouse (the Defendant). A divorce is not final until a decision is made and the Court enters a divorce decree.

There are two categories of divorce in Pennsylvania, fault and no-fault. This will be an attempt to explain the differences.

How to Get a No-Fault Divorce

The only reason that the Plaintiff has to tell the court for a no-fault divorce is that the marriage is "irretrievably broken".

If both the wife and husband want a divorce and agree that the marriage cannot be saved, things are simple. After the complaint is filed, there is a 90-day waiting period. Each party then files a sworn statement that the marriage is irretrievably broken and that each wants a divorce, and asks the Court to grant it. This type of no-fault divorce is often called a 'mutual consent" divorce.

WHAT IF ONE SPOUSE DOESN'T WANT A DIVORCE?

A no-fault divorce can still be granted, even if one spouse does not agree, if:

- The couple has been living separate and apart for at least two years. A couple can be considered to be living separate and apart even though they still live in the same home, if they are living separate lives and have very little to do with each other.

AND

- It is proved that the marriage is "irretrievably broken."

ARE THERE STILL "FAULT" DIVORCES?

Yes. If:

- One spouse refuses to agree in a divorce, and
- The couple has not been separated two years, and
- The spouse seeking the divorce doesn't want to wait two years, the Plaintiff can still get a divorce, but must prove that the other spouse is at fault - that is, did something wrong to the Plaintiff. And the Plaintiff must show that he or she did little or nothing wrong to the Defendant. If both spouses were at fault, no divorce will be granted.

GROUNDS FOR DIVORCE

(a) The court may grant a divorce to the innocent and injured spouse whenever it is judged that the other spouse has:

- Committed willful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without reasonable cause, for a period of

one or more years.

- Committed adultery.
- By cruel and barbarous treatment, endangered the life or health of the injured and innocent spouse.
- Knowingly entered into a bigamous marriage while a former marriage is still subsisting.
- Been sentenced to imprisonment for a term of two or more years upon conviction of having committed a crime.
- Offered such indignities to the innocent and injured spouse as to render that spouse's condition intolerable and life burdensome.

(b) Institutionalization. - The court may grant a divorce from a spouse upon the ground that insanity or serious mental disorder has resulted in confinement in a mental institution for at least 18 months immediately before the commencement of an action under this part and where there is no reasonable prospect that the spouse will be discharged from inpatient care during the *18* months subsequent to the commencement of the action. A presumption that no prospect of discharge exists shall be established by a certificate of the superintendent of the institution to that effect and which includes a supporting statement of a treating physician.

(c) Mutual consent - The court may grant a divorce where it is alleged that the marriage is irretrievably broken and 90 days have elapsed from the date of commencement of an action under this part and an affidavit has been filed by each of the parties evidencing that each of the parties consents to the divorce.

(d) Irretrievable breakdown

(1) The court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken and the defendant either:

(i) does not deny the allegations set forth in the affidavit.

(ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken.

(2) If a hearing has been held pursuant to (l)(ii) and the court

> determines that that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days not more than 120 days unless the parties agree to a period in excess of 120 days. During this period, the court shall require counseling. If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. I f the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

WHAT TO CONSIDER IF YOU ARE INVOLVED IN A DIVORCE ACTION?

If you are involved in a divorce action, you need to consider asking for custody, alimony, support, marital property, counseling, and attorney's fees before a divorce is finalized.

Alimony

Either spouse can get alimony, support after the divorce, by an agreement of the parties or by court order. The court will consider factors such as the length of the marriage, the division of the parties' marital property, and the parties' ages, health, earning capacities, and needs in deciding whether, in what amount, and for how long to award alimony.

A couple can agree to the amount, duration, and manner of payment of alimony, but the court may modify the agreement.

Alimony may be ordered for specific time or an unlimited time, depending upon whether the person can work or develop a job skill. If, because of age, disability or the need to care for children, it is difficult for the person to work, alimony may be ordered for a long or unlimited time.

A person asking for alimony must request it as part of a divorce action before the court finally grants the divorce. If you don't ask now, you can never come back and ask the court to order it. After alimony is granted, a person loses the right to continue getting it if he or she remarries or lives together as husband and wife with a person of the opposite sex.

Either spouse also can get a court order for temporary support until the court grants a divorce. Under this temporary order a spouse may also receive attorney's fees, medical insurance coverage, and other expenses.

Marital Property

Marital property generally means all property acquired during the marriage. Marital property includes the increase in the value of any property which one spouse acquired before the marriage or acquired by gift or inheritance, but not the property itself. It does not matter if the title to the property is in the name of only one spouse.

A couple can agree to divide their property in any way they choose. They may have the court make the agreement part of the court order. Except in unusual cases such as fraud, the court cannot modify a property division agreement as long as the parties fully disclosed their financial situations to each other and entered into the agreement knowingly and voluntarily.

An agreement is a good idea because it saves both parties money, time and aggravation. However, if no agreement is possible, either spouse can ask the court to divide the marital property in a fair way. In deciding how to divide the marital property the court will consider many factors, such as the number of children, the parties' health, and their standard of living. The court has the right to give more of the marital property to one party than to the other.

As with alimony, a request that the court divide marital property must be made as part of the divorce action before the court finally grants the divorce.